

MILBANK, TWEED, HADLEY & McCLOY LLP

Robert J. Liubicic (SBN 271465)
rliubicic@milbank.com
601 South Figueroa Street, 30th Floor
Los Angeles, CA 90017-5735
Telephone: (213) 892-4000
Facsimile: (213) 629-5063

MILBANK, TWEED, HADLEY & McCLOY LLP

Sander Bak (*Admitted Pro Hac Vice*)
sbak@milbank.com
Nicole Vasquez Schmitt (*Admitted Pro Hac Vice*)
nschmitt@milbank.com
1 Chase Manhattan Plaza
New York, NY 10005
Telephone: (212) 530-5000
Facsimile: (212) 530-5219

Attorneys for Defendants Deutsche Bank AG,
Deutsche Bank (Suisse) SA, and Deutsche Bank S.A.E.

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Edward D. Fagan, individually, and as
a member of the "Interest Association
of Wertheim Heirs",

Plaintiff,

v.

Deutsche Bank AG, Deutsche Bank
Suisse Geneva, Deutsche Bank Spain
SA and Hans Hoffmann, deceased
Honorary Consul General of Germany to Spain,

Defendants.

Case No. CV 12-7582-PA-MANx

**SECOND REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF
DEUTSCHE BANK AG, DEUTSCHE
BANK (SUISSE) SA, AND
DEUTSCHE BANK, S.A.E.'S
MOTION TO DISMISS**

Complaint Filed: September 5, 2012
Judge: Hon. Dale S. Fischer
Hearing Date: December 17, 2012
Hearing Time: 1:30 p.m.
Courtroom: 840 - Roybal

SECOND REQUEST FOR JUDICIAL NOTICE

Defendants Deutsche Bank AG, Deutsche Bank (Suisse) SA,¹ and Deutsche Bank S.A.E.² (collectively, the “Banks”) hereby request that the Court take judicial notice of (i) a September 5, 2012 complaint filed by Plaintiff against Credit Suisse AG and other Credit Suisse entities in the United States District Court for the District of Columbia (the “CS Complaint,” attached as Ex. A) and (ii) the recent order dismissing the CS Complaint (the “CS Order,” attached as Ex. B).³ The CS Complaint is virtually identical to the Complaint in the present case and—just as here—is brought by Plaintiff “individually, and as a member of the ‘Interest Association of Wertheim Heirs.’” The CS Order dismissed the CS Complaint on the basis that Plaintiff attempted to represent the interests of other persons *pro se*. This request is made pursuant to Rule 201 of the Federal Rules of Evidence and the authorities cited below, and in connection with the Banks’ pending Motion to Dismiss. [Dkt. 16].

Exhibit	Description
A	<i>Edward D. Fagan, individually, and as a member of the “Interest Association of Wertheim Heirs” v. Credit Suisse AG, et al.</i> , Case No. 12-1468 (RBW) (D.D.C. September 5, 2012) -- Complaint, ECF No. 1
B	<i>Edward D. Fagan, individually, and as a member of the “Interest Association of Wertheim Heirs” v. Credit Suisse AG, et al.</i> , Case No. 12-1468 (RBW) (D.D.C. November 16, 2012) -- Order, ECF No. 13

BASIS FOR REQUESTING JUDICIAL NOTICE

Exhibit A is the September 5, 2012 CS Complaint filed by Plaintiff, “individually, and as a member of the ‘Interest Association of Wertheim Heirs’” in

¹ DB Suisse is mistakenly named as “Deutsche Bank Suisse Geneva” in the Complaint.

² DB Spain is mistakenly named as “Deutsche Bank Spain SA” in the Complaint.

³ The CS Order was issued on November 16, 2012, subsequent to the Banks’ initial Request for Judicial Notice filed with the Court on October 26, 2012. [Dkt. 17].

1 the United States District Court for the District of Columbia against Credit Suisse
2 AG and various other Credit Suisse entities. The CS Complaint is virtually
3 identical to the Complaint in the present case.

4 Exhibit B is the November 16, 2012 CS Order of the United States District
5 Court for the District of Columbia dismissing the CS Complaint. As noted above,
6 Plaintiff's CS Complaint was styled *exactly* as here—on behalf of “Edward D.
7 Fagan, individually, and as a member of the ‘Interest Association of Wertheim
8 Heirs.’” See Exs. A, B (caption). The District of Columbia Court dismissed
9 Plaintiff's suit without prejudice because the CS Complaint, on its face, “indicates
10 that the plaintiff, who is proceeding pro se, is representing the interests of others in
11 addition to his own interest, which as a former member of the Bar the plaintiff
12 should have appreciated he could not legally do.” Ex. B (emphasis in original).
13 This reasoning is also a basis for dismissal of the present action.

14 Courts may take judicial notice of proceedings in other courts. See *US ex rel*
15 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.
16 1992) (citing *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169 (10th Cir.
17 1979)) (“[W]e ‘may take notice of proceedings in other courts, both within and
18 without the federal judicial system, if those proceedings have a direct relation to
19 matters at issue.’”). Exhibits A and B are documents of public record and are “not
20 subject to reasonable dispute [and] capable of accurate and ready determination by
21 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
22 201(b)(2).

1 For the foregoing reasons, Exhibits A and B may properly be considered by
2 the Court in ruling on the Banks' Motion to Dismiss.

3
4 Dated: November 21, 2012

5 Respectfully submitted,

6 **MILBANK, TWEED, HADLEY & McCLOY LLP**

7 By: _____/s/ Robert J. Liubicic

8 Robert J. Liubicic

9 Sander Bak

10 Nicole Vasquez Schmitt

11 Attorneys for Defendants

12 *DEUTSCHE BANK AG*

13 *DEUTSCHE BANK (SUISSE) SA*

14 *DEUTSCHE BANK S.A.E.*

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 601 South Figueroa Street, 30th Floor, Los Angeles, California 90017.

On November 21, 2012, I served the foregoing document(s) described as **SECOND REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEUTSCHE BANK AG, DEUTSCHE BANK (SUISSE) SA, AND DEUTSCHE BANK, S.A.E.'S MOTION TO DISMISS** on the interested parties in this action:

X by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Edward D. Fagan
Interest Association of Wertheim Heirs
5708-01 Arbor Club Way
Boca Raton, FL 33433
faganinternational@gmail.com

X **BY ELECTRONIC TRANSMISSION:** The foregoing document was transmitted via the Court's ECF System to the parties listed on the attached service list.

X **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 21, 2012 at Los Angeles, California.

/s/ Jenifer Gibbs
Jenifer Gibbs